

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACY SMITH,

Defendant-Appellant.

---

UNPUBLISHED

April 29, 2004

No. 245490

Wayne Circuit Court

LC No. 02-003433

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

The prosecution charged, and a jury convicted, defendant Stacy Smith with one count of assault with intent to do great bodily harm, MCL 750.84. The trial court sentenced defendant to thirty-two months to ten years in prison. Defendant appeals his conviction and sentence, and we affirm.

On June 1, 2001, police arrived at the scene of a stabbing at the corner of Charlevoix and Drexel in Detroit. Upon arrival, the officers found Willie Robinson bleeding profusely. An eyewitness told police that two men, defendant and a man named “Buck,” had accosted Robinson and she identified defendant as the person who stabbed Robinson. Additionally, Robinson testified that defendant was the person who had stabbed him.

Defendant argues that the prosecution failed to present sufficient evidence to support his conviction. We review the evidence de novo in the light most favorable to the prosecution to determine whether sufficient evidence exists to allow a rational trier of fact to find a defendant guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999), citing *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748, amended 441 Mich 1201 (1992). Defendant says that the only evidence linking him to the crime is the testimony of a single eyewitness, and that her testimony lacks credibility. However, it is the province of the trier of fact, not this Court, to determine what inferences may be fairly drawn from the evidence. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (1998). Moreover, Robinson, the victim of the stabbing, testified that defendant was the person who stabbed him. We hold, therefore, that there was sufficient evidence to allow a rational jury to find defendant guilty beyond a reasonable doubt.

Defendant also maintains that the trial court erred in giving the jury an instruction regarding aiding and abetting because the information charged him as a principal; furthermore,

defendant contends that there was insufficient evidence to support such an instruction. We review claims of instructional error de novo. *People v Lowery*, 258 Mich App 167, 173; 673 NW2d 107 (2003). “An aiding and abetting instruction is proper where there is evidence that (1) more than one person was involved in the commission of a crime, and (2) the defendant’s role in the crime may have been less than direct participation in the wrongdoing.” *People v Head*, 211 Mich App 205, 211; 535 NW2d 563 (1995). As defendant himself points out on appeal, there was ample evidence to show that more than one person was involved in Robinson’s stabbing, and one of defendant’s theories at trial was that “Buck” was the person who actually stabbed Robinson. Moreover, “[a] defendant may be charged with a crime as a principal but convicted as an aider and abettor.” *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995) overruled in part on other grounds *People v Mass*, 464 Mich 615, 628; 628 NW2d 540 (2001); *People v Clark*, 57 Mich App 339, 343-344; 225 NW2d 758 (1985).

Defendant contends that he was denied the effective assistance of trial counsel due to counsel’s failure to request a discharge of the jury, pursuant to MCL 767.76, after the trial court granted the prosecution’s motion to amend the information to include an aiding and abetting charge. Defendant failed to move for a new trial or a *Ginther*<sup>1</sup> hearing in the trial court, which “precludes review of the issue unless the appellate record contains sufficient detail to support the defendant’s claim.” *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000). Defendant must show that his counsel’s performance “was below an objective standard of reasonableness under prevailing professional norms” and that a reasonable probability exists that the outcome of the proceedings would have been different but for counsel’s errors. *Id.* at 659. Defendant must also “overcome a strong presumption that the assistance of his counsel was sound trial strategy.” *Id.* “Counsel is not obligated to make futile objections.” *People v Milstead*, 250 Mich App 391, 401; 648 NW2d 648 (2002), quoting *People v Meadows*, 175 Mich App 355, 362; 437 NW2d 405 (1989). Because defendant failed to preserve this issue with the appropriate postjudgment motion, we are precluded from reviewing this issue because the record does not contain sufficient details to support defendant’s claim. Moreover, because a defendant may be charged as a principal, yet convicted as an aider and abettor, the prosecution did not need to amend the information to obtain a conviction based upon the latter theory. Therefore, defendant was not denied effective assistance of counsel.

Defendant states that the trial court erred when it sentenced defendant because it incorrectly scored offense variable three (OV 3) of the Michigan sentencing guidelines at twenty-five points. This Court reviews the scoring decision of a sentencing court for an abuse of discretion, and to determine whether there was evidence on the record to support the challenged score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). A score of twenty-five on OV 3 is appropriate where a victim sustains a “life-threatening” injury. MCL 777.33(1)(c). Defendant says that OV 3 was scored incorrectly because there is no evidence that Robinson sustained life-threatening injuries. However, our review of the record reveals evidence that Robinson was stabbed several times and lost a significant amount of blood as a result, and that he spent time in the hospital on life support. Accordingly, we hold that there was clearly

---

<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973)

sufficient evidence to support a score of twenty-five on OV 3, and that the trial court did not abuse its discretion when it assigned that score.

Affirmed.

/s/ Brian K. Zahra  
/s/ Henry William Saad  
/s/ Bill Schuette